

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

MARK WITT,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 2:20-cv-04130-NKL
)	
UNITED STATES OF AMERICA,)	
)	
Defendants.)	

COMPLAINT

COMES NOW Plaintiff Mark Witt, through counsel, for his Complaint against Defendant, and states:

1. This is an action against the Defendant United States of America under the Federal Tort Claims Act ("FTCA") (28 U.S.C. § 2671, *et seq.*) and 28 U.S.C. § 1346(b)(1) for negligence and professional negligence in connection with the medical care provided to Plaintiff by the Department of Veterans Affairs at the Columbia, Missouri Veterans Affairs Medical Center (the "V.A.")
2. The claims herein are brought against Defendant under the FTCA sections referenced above for money damages as compensation for personal injuries caused by Defendant's negligence, and under the laws of Missouri.
3. Plaintiff has fully complied with the provisions of 28 U.S.C. § 2675 of the FTCA. Standard Form 95 attached as Exhibit 1.

4. This suit was timely filed because Plaintiff timely served notice of his claim on the Department of Veterans Affairs, the United States Department of Justice, less than three years after the incident forming the basis of this suit by serving the Form 95 by correspondence dated June 26, 2018. Exhibit 1.

5. The Department of Veterans Affairs, the United States Department of Justice failed to respond in any way to Plaintiff's notice mentioned in the prior paragraph within six months of Plaintiff sending the Standard Form 95 to the Department of Veterans Affairs; therefore, this constitutes a final denial of Plaintiff's claim under 28 U.S.C. § 2675(a). Plaintiff originally filed suit in this Court on January 18, 2019, Cause No. 2:19-cv-04012-BCW. That case was dismissed without prejudice on August 28, 2019. This case is being initiated within one year of that dismissal and is therefore timely under Missouri's saving statute, § 516.230 RSMo.

PARTIES

6. Plaintiff is a citizen and resident of Camden County, Missouri.

7. Defendant United States of America, through its agency, the Department of Veterans Affairs, operates facilities throughout the United States and throughout Missouri, including the V.A. in Columbia, Boone County, Missouri.

8. Defendant United States of America, including its officers, directors, operators, administrators, employees, agents, contractors, and staff at Veterans Affairs medical centers, including Dr. Daniel Hoyt, are hereinafter collectively referred to as the "VA Medical Center" or the "V.A."

9. At all times relevant to this Complaint, the VA Medical Center held themselves out to Plaintiff as a provider of high quality health care services, with the expertise necessary to maintain the health and safety of patients like Plaintiff.

10. At all relevant times, the directors, officers, operators, administrators, employees, agents, contractors, and staff, including Dr. Daniel Hoyt, were acting on behalf of, and in the course and scope of their employment with Defendant United States of America by and through the VA Medical Center.

JURISDICTION & VENUE

11. This Court has jurisdiction over the parties because the claims herein arise under 28 U.S.C. § 1346(b)(1).

12. Venue is proper in the Court under 28 U.S.C. § 1402(b) in that all or a substantial portion of the acts or omissions forming the basis of these claims occurred in the Western District of Missouri, and in this Division under Local Rule 3.2(b)2. in that the claims for relief arose in the Central Division.

FACTUAL ALLEGATIONS

13. On January 18, 2017, Plaintiff underwent prostate surgery at the V.A. in Columbia, Missouri.

14. During the course of Plaintiff's hospital stay associated with the January 18, 2017 surgery, a Foley catheter was placed inside of Plaintiff's urethra.

15. On January 27, 2019, Plaintiff returned to the V.A. to have the Foley catheter removed.

16. A nurse initially tried to remove the catheter, but was unable to do so.

17. The nurse informed other V.A. agents or employees, including Dr. Daniel Hoyt, regarding her difficulty in removing the Foley catheter.

18. V.A. agents or employees, including Dr. Daniel Hoyt, thereafter did forcefully pull and remove the catheter from Plaintiff's urethra.

19. As a direct and proximate result of the V.A. forcefully pulling the Foley catheter from Plaintiff's urethra, Plaintiff was thereby damaged.

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20. Plaintiff re-states and re-alleges all prior paragraphs of this Complaint as if fully stated here.

21. At all times relevant, the directors, officers, operators, administrators, employees, agents and/or staff, including Dr. Daniel Hoyt, were employed by and/or acting on behalf of Defendant United States of America.

22. At all times relevant, the directors, officers, operators, administrators, employees, agents and/or staff, including Dr. Daniel Hoyt, acted within their respective capacities and scopes of employment for Defendant United States of America.

23. The directors, officers, operators, administrators, employees, agents and/or staff, including Dr. Daniel Hoyt, negligently and/or recklessly, directly and proximately caused personal injury to Plaintiff, including both acts of omissions and acts of commission.

24. As a direct and proximate result of Defendant United States of America's negligence, Plaintiff sustained serious and permanent personal injuries in and about his body; he has incurred medical expenses, and other damages, and will continue to incur medical expenses, and other damages in the future; he was forced to endure pain, suffering, and mental anguish,

and will continue to endure pain, suffering, and mental anguish in the future; he has suffered loss of the enjoyment of life, and will continue to suffer a loss of the enjoyment of life in the future.

25. The acts and/or omissions set forth above would constitute a claim under Missouri law.

26. Defendant United States of America is liable under 28 U.S.C. § 1346(b)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in his favor and against Defendants as follows:

- 1) Medical expenses, pain and suffering, future impairment, and loss of enjoyment of life in an amount in excess of \$100,000.00; and
- 2) Costs and attorney fees incurred in the civil action;
- 3) Any other relief this Court deems just and proper.

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